

1 UNITED STATES BANKRUPTCY COURT
2 FOR THE SOUTHERN DISTRICT OF NEW YORK
3 Case No. 08-13555 (JMP) (Jointly Administered)

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5 In Re:

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7 LEHMAN BROTHERS HOLDINGS, INC., et al.,

8

9 Debtors.

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12

13 United States Bankruptcy Court

14 One Bowling Green

15 Room 601

16 New York, NY 10004-1408

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19 March 22, 2012

20 10:04 AM

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22 B E F O R E:

23 HON. JAMES M. PECK

24 U.S. BANKRUPTCY JUDGE

25

1 Motion of Lehman Brothers Holdings Inc. and Lehman Brothers
2 Special Financing, Inc. to Estimate Claims filed by Citadel
3 Equity Fund Ltd. For Purposes of Establishing Reserves [ECF No.
4 26097]

5

6 Debtors' Ninety-Second Omnibus Objection to Claims (No Blocking
7 Number LPS Claims) [ECF No. 14472]

8

9 Debtors' One Hundred Thirty-Sixth Omnibus Objection to Claims
10 (Misclassified Claims) [ECF No. 16867]

11

12 Debtors' One Hundred Tenth Omnibus Objection to Claims (Pension
13 Claims) [ECF No. 15010]

14

15 Debtors' One Hundred Twenty-First Omnibus Objection to Claims
16 (To Reclassify Proofs of Claim as an Equity Interest) [ECF No.
17 16075]

18

19 Debtors' One Hundred Thirty-Sixth Omnibus Objection to Claims
20 (Misclassified Claims) [ECF No. 16867]

21

22 Debtors' One Hundred Eighty-Ninth Omnibus Objection to Claims
23 (No Liability Repo Claims) [ECF No. 19870]

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25 Debtors' Twenty-Eighth Omnibus Objection to Claims (Valued

1 **Derivative Claims) [ECF No. 9983]**

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25 **Transcribed by: Anna Maria Leon**

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P R O C E E D I N G S

THE COURT: Be seated, please. Good morning.

MR. SINGH: Good morning, Your Honor. Sunny Singh, Weil, Gotshal & Manges on behalf of the debtors.

THE COURT: Good morning.

MR. SINGH: Debtor re-filed an agenda yesterday for today's claims hearing and with your permission, I propose we just walk through the items on the agenda.

THE COURT: Let's do that.

MR. SINGH: Your Honor, the first item on the agenda is the motion of Lehman Brothers Holdings Inc. and Lehman Brothers Special Financing Inc. for estimation of certain claims filed by Citadel Equity Fund Ltd. for purposes of establishing distribution reserves under the plan. Your Honor, specifically for the reasons we set forth in the motion, the debtors seek the entry of an order estimating certain claims filed by Citadel, specifically a contingent claim filed by Citadel against LBSF, that's claim number 33631 at zero dollars; a contingent guarantee claim filed by Citadel against LBHI, that's claim number 33632 at zero dollars; and a portion of Citadel's guarantee claim against LBHI that relates to LBHI's guarantee of LBIE at approximately \$423 million, that's claim number 33633. That reduction -- the claim for Libby reflects a reduction of approximately \$56 million in post-petition interest that accrued.

1 Your Honor, the principal portion of the Libby claim
2 has been sold to Credit Suisse Funding LLC in response to some
3 comments we received from Credit Suisse, we've clarified and
4 filed a revised proposed order clarifying that the reduction of
5 distribution reserves relates only to the portion of post-
6 petition interest which is still owed by Citadel, not to the
7 principal portion which is owned by Credit Suisse. Your Honor,
8 we filed a motion in accordance with a case management order
9 and served it on Citadel. No response has been filed. And
10 unless Your Honor has any questions, we request that the order
11 be entered.

12 THE COURT: It will be entered.

13 MR. SINGH: Thank you.

14 Your Honor, the balance of the agenda will be handled
15 by my colleague, Mark Bernstein.

16 MR. BERNSTEIN: Good morning, Your Honor. Mark
17 Bernstein, Weil, Gotshal & Manges on behalf of Lehman Chapter
18 11 debtors.

19 The next item on the agenda is the Ninety-Second
20 Omnibus Claim Objection to the claim of Christina Kim. This is
21 a carry-over item from the last hearing where the debtors had
22 told Your Honor that we had reached out to Ms. Kim to see if
23 she could provide us any information to resolve our No Blocking
24 Number Objection, if she could prove that she -- that there was
25 no duplicate claims and she can validate her ownership. At

1 that time she hadn't responded to our first letter. We did
2 send her a second letter following that hearing letting her
3 know that Your Honor had provisionally granted the objection,
4 but gave her 30 days to respond to us. She -- we have not
5 received any further response and at this time, we respect that
6 her claim be expunged from claims registered.

7 THE COURT: The relief you seek will be granted.

8 MR. BERNSTEIN: Thank you, Your Honor.

9 The next item under -- on the agenda is the Hundred
10 and Thirty-Six Omnibus Objection to Claims. This seeks to
11 reclassify certain claims that were filed as secured claims as
12 unsecured claims on the claims register.

13 The debtors have resolved the issue with respect to
14 these claims, with respect to Diamondback Master Fund, LMA SPC
15 on behalf of Map I, and Tronox, who had initially been opposing
16 the omnibus objection and the reclassification of their claims.
17 The debtors have a black line of an order with some additional
18 language that addresses some of the concerns of the parties.
19 May I hand it up to Your Honor?

20 THE COURT: Yes.

21 MR. BERNSTEIN: The new language in the order
22 effectively provides for two things; one, with respect to
23 Diamondback and LMA SPC, they -- those are prime brokerage
24 creditors and they wanted to reserve any rights they may have
25 to assert in the future that certain property is not property

1 of the estate, but rather property of those creditors.

2 The debtors are willing to allow them to reserve that
3 right and not trying to affect that. However, that doesn't
4 mean their claim should be secured. So, with the inclusion of
5 this language, they are -- they agree to have their claims be
6 reclassified as unsecured claims. And then the language on the
7 second -- the top of page -- the second page, top of page 3,
8 sorry -- preserves any parties' valid rights of set-off to the
9 extent they have them. With that language, this is going
10 forward on an uncontested basis. I request Your Honor grant
11 the Hundred and Thirty-Sixth with respect to Diamondback, LMA,
12 and Tronox.

13 THE COURT: The relief you seek is granted as to
14 these parties on an uncontested basis.

15 MR. BERNSTEIN: Thank you, Your Honor.

16 The -- now, we now move to the contested portion of
17 the agenda and the first item on here is the Debtors' One
18 Hundred Tenth Omnibus Objection to Claims. This was an
19 objection to the claim of Margaret Gattuso. Her claim was
20 filed against the debtor seeking to recover based on certain
21 pension obligations that LBHI had at one point. Pursuant to a
22 settlement agreement that the debtors entered into with the
23 PBGC back in 2008, the debtors made a payment to the PBGC of
24 about \$127 million and that satisfied all of LBHI's obligations
25 in connection with the pension plan, and any payments to the

1 participants in that plan is being -- are being made by the
2 PBGC who is the Trustee and the Administrator of that plan at
3 this time.

4 We have reached out to this creditor and explained to
5 her that that's the case and that any recovery she has should -
6 - she should request from the PBGC. We're happy to continue to
7 speak with her and facilitating discussions about when and if
8 she may receive any distributions, but pursuant to the
9 agreement, the settlement agreement, and also pursuant to
10 ERISA, she's not entitled to a double recovery from the estates
11 as well. So at this point, we're seeking to expunge her claim
12 from the claims register.

13 THE COURT: If I recall correctly, this claimant
14 filed a letter in the docket objecting to this treatment of her
15 claim and indicated that she intended to appear. I believe
16 that was in June of last year.

17 I'm just going to ask if Margaret Gattuso is present
18 in Court or participating by telephone or if any representative
19 is speaking on her behalf?

20 There's no response. Having reviewed the objection
21 and also her response to the objection, I grant the objection
22 inasmuch as her petition is sympathetic but lacking in merit.

23 MR. BERNSTEIN: Thank you, Your Honor.

24 The next item on the agenda is the One Hundred
25 Twenty-First Omnibus Objection to Claims. This objection seeks

1 to reclassify certain claims as equity interest in the debtors
2 as they were filed based on common or preferred stock of LBHI.
3 The claim filed by Mary Lynch has attached to it a one-page --
4 what appears to be some kind of hand-written statement or
5 statement prepared by the claimant, which identifies her
6 holdings in Lehman by the ticker symbol "LEMHQ." While that is
7 actually not a ticker for any security registered anywhere,
8 "LEHMQ" is -- was the ticker symbol for the old Lehman Brothers
9 common stock. So based on her proof of claim, we believe she
10 is a holder of Lehman Brothers common stock.

11 The reply letter that we received from this claimant
12 didn't make it any more clear that she was asserting a claim
13 for anything other than common stock. And therefore at this
14 point, we're seeking to have her claim reclassified as equity,
15 which is what we believe that it is.

16 THE COURT: All right. Is Mary Lynch present or on
17 the telephone or is anyone here to speak on her behalf?

18 I hear no response. This is an unopposed objection
19 to claim seeking to reclassify that claim as equity. The
20 arguments made are persuasive on behalf of the debtor and I
21 grant the objection as to the Mary Lynch claim.

22 MR. BERNSTEIN: Thank you, Your Honor.

23 The next item on the agenda, number 6, is again the
24 Debtors' Omnibus -- One Hundred Thirty-Sixth Omnibus Objection
25 to Claims that seeks to reclassify claims that were filed as

1 secured as unsecured claims. We're going forward today with
2 the claim of Stadt Schwaebisch Hall. The claim was initially
3 asserted as secured, with the language in the claim that says,
4 "the claim is filed as a secured claim to the extent of the
5 value of any right of set-off, and as a general unsecured claim
6 to the extent of the remaining amount of the claim."

7 The proof of claim does not assert any actual or any
8 rights of set-off or that they are actually holding money that
9 they're seeking to set-off, and the response letter sent by
10 this creditor also does not assert any basis for a claim -- for
11 secured claim. It just gives more detail about the unsecured
12 claim which they're seeking to collect on. As a result, the
13 debtors believe that this claim is an unsecured claim and
14 should be reclassified on the docket as an unsecured claim.

15 THE COURT: Based upon my review of the Stadt
16 Schwaebisch Hall submission, it appears that what literally it
17 is asserting an unsecured claim rather than a secured claim,
18 and has done a calculation in Euros converted to dollars. I
19 believe we're talking about a \$54,000.

20 I'm just going to ask if anyone is here representing
21 Stadt Schwaebisch Hall in person or on the telephone.

22 There's no response. Based upon my review of the
23 submission and the positions asserted by the debtors, I grant
24 the objection as to this particular claimant and it will be
25 reclassified as an unsecured claim.

1 MR. BERNSTEIN: Thank you, Your Honor.

2 The last item on the agenda is the Debtors' One
3 Hundred Eighty-Ninth Omnibus Objection to Claims. This
4 objection sought to disallow and expunge certain claims
5 asserted against LCPI based on repurchase agreements that were
6 entered into with third parties. We're here today on a
7 contested basis with respect to the claims of Marquette
8 Financial Companies and Highland Credit Strategies Master Fund.
9 Both of these creditors have very similar situations. They
10 entered into repurchase agreements with -- were LCPI as well as
11 LBI were the Lehman parties that were subject to them. The
12 repurchase agreements are similar to the derivative contracts
13 that we've dealt with in this case in that there's a standard
14 form agreement that cannot be changed and then parties can
15 enter into supplemental terms and conditions, modifying the
16 standard terms and then also enter into a confirmation
17 detailing the specific financial terms of each transaction.
18 Each confirmation, when taken together with the master
19 repurchase agreement and any supplemental terms, represents its
20 own individual transaction and to the extent that one party,
21 one Lehman party is listed on the confirmation or is party to
22 an individual transaction, there's no liability for the other
23 Lehman party. And the supplemental terms make that clearer
24 when they say that with respect to individual repurchase
25 transactions, this agreement shall only apply to the Lehman

1 Brothers entity, i.e., Lehman Brothers Inc., Lehman Brothers
2 Commercial Paper Inc., printed on the confirmation as described
3 in Section 3(b) provided to the counter-party of Lehman
4 Brothers entity. So to the extent that LBI is on the
5 confirmation, the party is not entitled to collect from LCPI
6 and vice versa as well.

7 The confirmations in connection with these particular
8 transactions unfortunately don't list either LBI or LCPI, but
9 rather they list Lehman Brothers Global Trading Finance as the
10 counter-party to the particular repo transaction. The two
11 creditors seeking to -- that are here today assert that Lehman
12 Brothers Global Trading Finance was a trade name for Lehman
13 Commercial Paper Inc. and therefore they're entitled to collect
14 from Lehman Commercial Paper Inc. for these claims. This is
15 inconsistent with the debtors' records. The debtors have
16 reviewed their records and these two trades with Marquette and
17 Highland were included on LBI's books and records, and were
18 included in Lehman's systems as we attached to our reply as LBI
19 trades and as trades that rolled up to LBI.

20 Furthermore, the confirmations included a company of
21 ledger code on them and the codes were "G4SK" and "G422."
22 We've also attached to our reply Lehman's company ledger code
23 list which identifies which codes apply to which Lehman
24 Brothers entities. Lehman Brothers Global Trading Finance is
25 not listed on this company ledger code list in any way,

1 actually, and neither are the specific codes "G4SK" nor "G422."
2 However, the code that begins with "G" only relates to Lehman
3 Brothers Inc. and there's no other entities that have a code
4 that begins with the letter "G" and therefore, based on
5 Lehman's records and on this code list, it is Lehman's position
6 that these were LBI trades and therefore these creditors should
7 seek to collect from LBI and are not entitled to collect from
8 LCPI. And as a result, we request that their claims be
9 disallowed and expunged.

10 THE COURT: I take it we have counsel here for both
11 Marquette and Highland Credit. So why don't we hear from them
12 in turn?

13 MR. BAUM: Yes, Your Honor. May I speak from the
14 attorney's table?

15 THE COURT: I'd prefer if you spoke from the podium.

16 MR. BAUM: Certainly.

17 Good morning, Your Honor. Kenneth Baum, Cole,
18 Schotz, Meisel, Forman & Leonard representing Highland Credit
19 Strategies Master Fund, L.P., claim number 3136 specifically in
20 the context of this motion.

21 Your Honor, it appears, and I think it's been made
22 clear certainly, that there is a -- there is only really one
23 major dispute issue of fact here, but it is a critical one,
24 obviously. The question is who was this transaction
25 consummated between. On the one side, there's no dispute it

1 was my client. On the other side, the question is which Lehman
2 entity, and there's no dispute that under the master repo
3 agreement, it does depend upon -- notwithstanding who was a
4 party to the master repo agreement, it does depend upon who the
5 particular transaction was consummated with.

6 THE COURT: Can I ask you a question?

7 MR. BAUM: Sure.

8 THE COURT: Have you made a claim in the LBI case?

9 MR. BAUM: I -- Your Honor, I don't believe so.
10 I've not had a chance to check with my client. They have
11 handled all the filings of the claims in-house, but I can
12 verify that with them, but standing here today, I don't know
13 right now.

14 THE COURT: All right. I think that will be a
15 useful thing to find out.

16 MR. BAUM: I think it would be helpful as well, and
17 I will certainly look into that.

18 But with regard to the issue at stake here, Your
19 Honor, the reality is anything that's been advanced by the
20 debtors thus far has not been in the context of a sworn
21 statement from a Lehman representative. All we've had thus far
22 are unsworn statements of counsel, we've had documents
23 produced. We had a document submitted as part of pleadings,
24 but nothing that's been in response to a specific discovery
25 request, nothing that's given as part of sworn testimony, and

1 before a claim can be expunged where the issue has been joined,
2 I would submit that that is simply not a competent basis to
3 adjudicate a critical issue of fact like this. Quite frankly,
4 this had been adjourned as Your Honor is probably aware. This
5 hearing had been adjourned and rolled over several times until
6 earlier this week when we found the latest reply filed by the
7 debtors, so we had not had a chance to conduct any kind of --
8 we simply didn't conduct discovery because it was our opinion
9 that the -- or it was our belief based upon my conversations
10 with debtors' counsel that they were still looking at this. So
11 the latest filing simply came as, "well, we're submitting this
12 now, and we're ready to go forward on Thursday." But quite
13 frankly having unsworn statements of counsel, no records really
14 have been created here, and I would submit that before Your
15 Honor can properly adjudicate this, we would have to be
16 afforded the right to conduct some kind of very brief and very
17 limited and very specific discovery, of course, on this issue
18 and obtain documents the way documents should properly be
19 produced and testimony given under the Federal rules and
20 Bankruptcy Rule 9014.

21 THE COURT: Does your client have any evidence of
22 its own that would connect Lehman Brothers Global Trading and
23 Finance to LCPI?

24 MR. BAUM: Their only belief was that based upon the
25 transaction confirmation sheet --

1 THE COURT: The question is whether you have any
2 evidence.

3 MR. BAUM: I -- standing here today, Your Honor, no.
4 No independent evidence.

5 THE COURT: All right. So if there were discovery
6 taken and discovery were addressed to your client and you were
7 asked to identify anything that would connect the counter-party
8 to this trade to the party against whom you are asserting your
9 claim, you would have no information that would connect LBGTF
10 to LCPI?

11 MR. BAUM: Again, Your Honor, that would of course
12 have to be through my client giving a sworn statement. As of
13 here today, I don't -- I can't say yes, but that would have to
14 be them telling me under a sworn statement filed with Your
15 Honor whether it does. I don't know. As of today, I don't
16 know that. I can't say that I do.

17 THE COURT: All right. I understand your position.

18 MR. BAUM: Okay.

19 MS. MIKHAILEVICH: Good morning, Your Honor.
20 Jessica Mikhailevich, Dorsey & Whitney on behalf of Marquette
21 Financial Companies.

22 We're very similar position to Highland Creditor. We
23 filed our proof of claim 22949 in these proceedings, also
24 feeling that the Lehman entity that was responsible is LCPI,
25 not LBI. We did file a place holder proof of claim in the LBI

1 proceedings, however we do feel that the party that is
2 accountable for this trade and responsible for the loss on the
3 trade itself is LCPI. We don't have any documents to put forth
4 that LGBTF (verbatim) is LCPI, but we want to conduct discovery
5 from the debtor and we feel that their response didn't
6 necessarily rise to the level of proving that our claim should
7 be disallowed entirely. We would like to conduct discovery and
8 see what else they can provide to show that it's not that just
9 the "G" code linked to LBI in other trades can somehow
10 attribute that LGBTF (verbatim) in this situation was linked to
11 LBI.

12 THE COURT: When your client filed -- if you know,
13 when your client filed the protective proof of claim in the LBI
14 case, and a proof of claim against LCPI here, was there any
15 information within your client's records to your knowledge that
16 would connect LBGTF to LCPI?

17 MS. MIKHAILEVICH: Your Honor, I don't have
18 information about that. I was not involved in the place holder
19 filing, so I don't really know what the link was or what was
20 submitted in terms of connecting LGBTF (verbatim) to LBI or
21 LCPI.

22 THE COURT: All right. Thank you.

23 MS. MIKHAILEVICH: Thank you.

24 THE COURT: So what do you have to say about all of
25 this?

1 MR. BERNSTEIN: The debtors have searched their
2 records and believe that what we've attached to the reply is
3 all there is as to determine who the party to this trade is and
4 who LBGTF, which entity that actually relates to.

5 THE COURT: Is there an individual who could provide
6 a declaration that would connect all of the dots as to the
7 relationship, if any, between LBGTF and LCPI, and the
8 relationship between LBGTF and LBI? Because while I think your
9 reply papers are persuasive that there is in fact no connection
10 between LCPI and this trade name, it would be helpful to the
11 parties who are expressing uncertainty as to your assertions
12 and it will be helpful to the Court if there were some more
13 definitive evidence that would make clear that LBGTF is in fact
14 a synonym for LBI and not for LCPI. I also don't understand
15 how this trade ended up with what appears to be an almost
16 fictitious entity. I don't know what Lehman Brothers Global
17 Trading and Finance is, and I've been involved in this case for
18 three-and-a-half years -- I think it's been more than three-
19 and-a-half years.

20 So some showing as to what this name is, why it was
21 used, how it ended up on the trade, and whether or not LBI
22 itself would in effect attorn to these creditors would be also
23 of use to know. I don't know what position LBI is taking. Do
24 you?

25 MR. BERNSTEIN: I do not. Happy to find that

1 information out and to provide a declaration. I think that any
2 declaration we provide is going to be mostly linked to the
3 information that's attached to our reply because anybody who
4 was around when these trades were entered into is no longer
5 around the Lehman, and they -- the -- many of the records that
6 were around at that time obviously went with different
7 divisions as they were sold as well, possibly are at LBI. But
8 we're certainly happy to provide the declaration of, you know,
9 what information we know.

10 THE COURT: Well, in effect, counsel for Highland is
11 taking the position that as a matter of procedure in order to
12 deal with the assertions made in the reply papers, there should
13 be somebody providing evidence other than counsel. You know,
14 whether or not that's a good position or not to take in every
15 instance, at least in this case, it seems reasonable given the
16 question marks that surround what I'm going to call this
17 fictitious name, that we should be able to connect this name to
18 the proper entity, and that these creditors should not be left
19 guessing as to whether or not the assertions you're making in
20 your papers are true or not.

21 So I'm going to suggest that at this juncture we
22 carry this to another omnibus date. It could be the next one
23 or whichever one is appropriate to provide an updated
24 submission and that the parties work cooperatively with each
25 other in the interim to answer these questions as efficiently

1 as possible. It seems to me that we're not talking about
2 something that's particularly esoteric. We're really trying to
3 track a name to an entity. If it turns out that the name
4 doesn't track to an entity, I think we're going to have an
5 interesting problem. I'd be particularly anxious to know
6 whether LBI itself through the Trustee would acknowledge that
7 claims arising from this fictitious name actually are claims
8 against LBI. Since I don't have an answer to that question
9 yet, that's another piece of information that I'd like to have.
10 And I think that Highland Credit would probably be well advised
11 to check to see if like Marquette a protective filing was made.
12 If one was made, maybe we don't have much to talk about. If
13 one wasn't made, maybe they're in trouble. I don't know yet.

14 So let's put this over until some more work has been
15 done on resolving the dispute.

16 MR. BERNSTEIN: Sure. We'll find out what we can
17 and come back to you.

18 THE COURT: Okay.

19 MR. BAUM: Your Honor, may we have the right to
20 submit limited discovery on this issue in the interim? We're
21 obviously not talking, you know --

22 MR. BERNSTEIN: We're happy to cooperate and provide
23 whatever information they're looking for.

24 THE COURT: I don't think that this is a -- I don't
25 think -- and, you know, you're -- this obviously is a courtroom

1 and we are governed by the Federal rules of practice and
2 procedure, but I'm proposing an informal exchange of
3 information, not the granting of discovery rights in converting
4 this into, to use the vernacular, a Federal case. This is a
5 dispute that can be resolved cooperatively and presumably
6 efficiently. If there's a problem, you're of course free to
7 come back and seek such discovery as may be needed through more
8 coercive means.

9 I think we're done for the day, and we're adjourned.

10 MR. BERNSTEIN: That's the last item. Correct.

11 THE COURT: Thank you. See you next time.

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13 (Whereupon these proceedings were concluded at 10:32 AM)

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I N D E X

RULINGS

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Debtors' Motion to Estimate Claims filed by	6	12
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To Claims - approved		
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Objection to Claims - approved		
Debtors' One Hundred Eighty-Ninth Omnibus	20	22
Objection to Claims - carried forward		

C E R T I F I C A T I O N

I, Anna Maria Leon, certify that the foregoing transcript is a
true and accurate record of the proceedings.

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